

1 Eugene P. Ramirez (State Bar No. 134865)  
eugene.ramirez@manningkass.com  
2 Kayleigh Andersen (State Bar No. 306442)  
kayleigh.andersen@manningkass.com  
3 **MANNING & KASS**  
**ELLROD, RAMIREZ, TRESTER LLP**  
4 801 S. Figueroa St, 15th Floor,  
Los Angeles, California 90017-3012  
5 Telephone: (213) 624-6900  
Facsimile: (213) 624-6999

6 Attorneys for Defendants, **COUNTY OF**  
7 **SAN BERNARDINO** and **JUSTIN**  
**LOPEZ**

9  
10 **UNITED STATES DISTRICT COURT**  
11  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 A.H. and H.H., in each case a minor, by  
14 and through their guardian ad litem  
15 Crystal Hanson, individually and as  
successor in interest to Shane Holland,  
deceased; C.H., a minor, by and through  
her guardian ad litem, Reymi Updike;  
individually and as successor in interest  
to Shane Holland, deceased, and  
16 PATRICIA HOLLAND, individually,

17 Plaintiffs,

18 v.

19 COUNTY OF SAN BERNARDINO;  
20 JUSTIN LOPEZ, and DOES 1-10,  
Inclusive,

21 Defendants.

Case No. 5:23-CV-01028 JGB-SHK

*[Honorable Jesus G. Bernal, Magistrate  
Judge, Shashi H. Kewalramani]*

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' STATEMENT OF  
GENUINE DISPUTES OF  
MATERIAL FACT AND  
PLAINTIFFS' ADDITIONAL  
MATERIAL FACTS**

Date: September 23, 2024

Time: 9:00 a.m.

Crtrm.: Courtroom 1

*Action Filed: 06/02/2023*

22  
23 **TO THIS HONORABLE COURT AND THE PARTIES AND THEIR**  
24 **RESPECTIVE COUNSEL OF RECORD:**

25 In accordance with C.D L.R. 56-3 and this Court's Standing Order, defendants  
26 County of San Bernardino ("County") and Deputy Justin Lopez ("Deputy Lopez")  
27 (collectively "Defendants") submit this Response to Plaintiffs' Statement of Genuine  
28 Disputes of Material Fact and Plaintiffs' Additional Material Facts [Doc. 37-1].

DEFENDANTS' FACTS AND SUPPORTING EVIDENCE [DUF]:	PLAINTIFFS' RESPONSES AND SUPPORTING EVIDENCE:
<p>1. On June 21, 2022, at approximately 2 a.m., San Bernardino County Sheriff's Department Deputy Justin Lopez (Deputy Lopez") conducted a traffic stop on a silver Ford Explorer in the area of US Route 395 and Cactus Road, in Adelanto.</p> <p>8 Lopez Depo. (Ex. "A") at 8:22-24, 9 18:1-5, 13-16; Hillebrand Depo. (Ex. 10 "B") at 10:19-22, 13:2-5; Hanson 11 Interview Audio (Ex. "C") at 9:40- 12 10:00; Hanson Interview Transcript 13 (Ex. "D") at 8:12-14; Rios Depo. (Ex. "G") at 12:2-14.</p>	Undisputed.
<p>14 2. Deputy Lopez broadcasted the 15 Explorer did not have license plates, 16 but later stated that the vehicle had an 17 obstructed rear license plate.</p> <p>18 Lopez Depo. (Ex. "A") at 17:5-19, 19 20:5-15; Lopez Audio (Ex. "E") at 0:00-0:15; Lopez Audio Transcript 20 (Ex. "F") at 2:1-9.</p>	Undisputed.
<p>21 3. Deputy Lopez made contact with the 22 driver, Robert Hanson ("Hanson"), 23 and the passenger who identified 24 himself as Andrew Atkins, later 25 identified by investigators as Shane 26 Holland ("Holland").</p> <p>27 Lopez Depo. (Ex. "A") at 21:2-19, 28 23-24, 23:14-16, 68:19-22, 69:1-3; Lopez Audio (Ex. "E") at 1:15-1:58; Lopez Audio Transcript (Ex. "F") at</p>	Undisputed.

1	3:12-4:7; Hanson Interview Audio (Ex. "C") at 10:27-11:25; Hanson Interview Transcript (Ex. "D") at 8:18-24, 19:3.	
4	4. Deputy Lopez asked Hanson if he had his license and registration, which Hanson stated he did not.  Lopez Depo. (Ex. "A") at 22:11-15; Lopez Audio (Ex. "E") at 0:15-0:50, 1:57-2:05; Lopez Audio Transcript (Ex. "F") at 2:10-23, 4:9-12; Hanson Interview Audio (Ex. "C") at 10:00- 10:27; Hanson Interview Transcript (Ex. "D") at 8:12-17.	Undisputed.
12	5. Deputy Lopez also asked if either Hanson or Holland was on probation or parole, Hanson stated no.  Lopez Audio (Ex. "E") at 0:15-0:50; Lopez Audio Transcript (Ex. "F") at 2:14-19.	Undisputed.
18	6. Holland also told Deputy Lopez that he did not have an ID.  Lopez Depo. (Ex. "A") at 22:16-17; Lopez Audio (Ex. "E") at 1:05-1:18; Lopez Audio Transcript (Ex. "F") at 3:9-13.	Undisputed.
23	7. Deputy Lopez advised the subjects he would return to his patrol vehicle to conduct a records check and did so over the radio through dispatch.  Lopez Depo. (Ex. "A") at 26:1-7, 27:14-22; Lopez Audio (Ex. "E") at 2:00-3:30; Lopez Audio Transcript	Undisputed.

1	(Ex. "F") at 4:16-24; Hanson Interview Audio (Ex. "C") at 11:00- 11:20; Hanson Interview Transcript (Ex. "D") at 9:1-2.	
4	8. When Deputy Lopez was at his patrol vehicle, Hanson asked Holland "what are you doing," regarding giving Deputy Lopez somebody else's name.  Hanson Interview Audio (Ex. "C") at 11:20-11:35; Hanson Interview Transcript (Ex. "D") at 9:4-5.	Objection: Hearsay; Irrelevant on the grounds that it was unknown to Lopez at the time of the shooting.
11	8. Moving Party's Response:	
12	Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection which is improper under C.D L.R. 56-3 and this Court's Standing Order which provides: "The opposing party shall not set forth legal or evidentiary objections in the statement of genuine disputes of material fact. . . . If a party fails to dispute a fact properly by offering evidence that does not contradict the proffered fact, the Court will deem the fact undisputed for purposes of the motion. <u>See</u> Fed. R. Civ. P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of this Motion.	
19	9. Holland told Hanson that he had a warrant for his arrest and he was going to be incarcerated for a long time.  Hanson Interview Audio (Ex. "C") at 11:25-12:50; Hanson Interview Transcript (Ex. "D") at 9:6-7, 10, 16- 17, 24-25.	Objection: Hearsay; Irrelevant on the grounds that it was unknown to Lopez at the time of the shooting.  At the time of the shooting, Lopez had no information that Holland had a criminal record and no information that he had ever committed an act of violence against another person.
27		"Ex. 1" (Lopez Depo.) at 49:8-13; "Ex. 4" (Sanchez Depo.) at 21:13-20.
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1	9. Moving Party's Response:	
2	Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection 3 which is improper under C.D L.R. 56-3 and this Court's Standing Order which 4 provides: "The opposing party shall not set forth legal or evidentiary objections in 5 the statement of genuine disputes of material fact. . . . If a party fails to dispute a 6 fact properly by offering evidence that does not contradict the proffered fact, the 7 Court will deem the fact undisputed for purposes of the motion. <u>See</u> Fed. R. Civ. 8 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of this Motion.	
9	10. Holland asked Hanson to "take off" 10 from the traffic stop to distract 11 Deputy Lopez and allow Holland to 12 flee.  13 Hanson Interview Audio (Ex. "C") at 14 11:46-12:50; Hanson Interview 15 Transcript (Ex. "D") at 9:11-12.	Objections: Hearsay; Irrelevant on the 16 grounds that it was unknown to Lopez 17 at the time of the shooting.
18	10. Moving Party's Response:	
19	Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection 20 which is improper under C.D L.R. 56-3 and this Court's Standing Order which 21 provides: "The opposing party shall not set forth legal or evidentiary objections in 22 the statement of genuine disputes of material fact. . . . If a party fails to dispute a fact properly by offering evidence that does not contradict the proffered fact, the Court will deem the fact undisputed for purposes of the motion. <u>See</u> Fed. R. Civ. P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of this Motion.	
23	11. Hanson refused to assist Holland and 24 said he was not going to get into 25 trouble for Holland.  26 Hanson Interview Audio (Ex. "C") at 27 11:46-12:50; Hanson Interview 28 Transcript (Ex. "D") at 9:13-15, 18- 23, 10:1-3.	Objections: Hearsay; Irrelevant on the 29 grounds that it was unknown to Lopez 30 at the time of the shooting.

1 11. Moving Party's Response:

2 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection  
3 which is improper under C.D L.R. 56-3 and this Court's Standing Order which  
4 provides: "The opposing party shall not set forth legal or evidentiary objections in  
5 the statement of genuine disputes of material fact. . . . If a party fails to dispute a  
6 fact properly by offering evidence that does not contradict the proffered fact, the  
7 Court will deem the fact undisputed for purposes of the motion. See Fed. R. Civ.  
8 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of  
this Motion.

9 12. Holland chose to run from the  
10 passenger side of the vehicle into the  
11 desert.  
12 Hanson Interview Audio (Ex. "C") at  
13 12:50-13:22; Hanson Interview  
14 Transcript (Ex. "D") at 10:4-14.

Objections: Hearsay; Calls for  
speculation as to Holland's state of  
mind; Irrelevant on the grounds that  
this was unknown to Lopez at the time  
of the shooting.

15 12. Moving Party's Response:

16 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection  
17 which is improper under C.D L.R. 56-3 and this Court's Standing Order which  
18 provides: "The opposing party shall not set forth legal or evidentiary objections in  
19 the statement of genuine disputes of material fact. . . . If a party fails to dispute a  
20 fact properly by offering evidence that does not contradict the proffered fact, the  
21 Court will deem the fact undisputed for purposes of the motion. See Fed. R. Civ.  
22 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of  
this Motion.

23 13. Deputy Lopez saw Holland get out of  
24 the vehicle and told him to get back  
25 in the vehicle, but Holland started  
fleeing from the traffic stop.

Undisputed.

26 Lopez Depo. (Ex. "A") at 27:5-10,  
27 28:1-3, 31:2-5, 50:20-23, 25, 51:1;  
28 Lopez Audio (Ex. "E") at 3:30-3:35;

1	Lopez Audio Transcript (Ex. "F") at 4:25.	
2	14. Deputy Lopez notified dispatch of the foot pursuit on the radio.  Lopez Depo. (Ex. "A") at 66:15-17; Lopez Audio (Ex. "E") at 3:30-3:40; Lopez Audio Transcript (Ex. "F") at 5:1; Hillebrand Depo. (Ex. "B") at 13:6-10; Rios Depo. (Ex. "G") at 13:14-23, 15:7-14.	Disputed to the extent that Lopez only stated, "I've got one running." Lopez Audio Transcript (Ex. "F") at 5:1.
3	14. Moving Party's Response:	
4	Plaintiffs' dispute is not to the fact presented, Plaintiffs' dispute is to the word choice, thus there is not dispute of fact. Further, Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action. Further, based upon all testimony of the deputies in this case, the statement over the radio is identical in meaning as understood by all involved deputies to the language in the DUF 14. This is in line with the deputies' testimony. Accordingly, this fact is undisputed for the purpose of this Motion.	
5	15. Deputy Lopez began running after Holland, and told Holland to get on the ground.  Lopez Depo. (Ex. "A") at 31:9-10; Lopez Audio (Ex. "E") at 3:30-3:45; Lopez Audio Transcript (Ex. "F") at 5:3.	Undisputed.
6	16. Deputy Lopez believed that Holland had something in his waistband, so he commanded Holland multiple times to "Let me see your hands."  Lopez Depo. (Ex. "A") at 28:10-21, 42:6-13; Lopez Audio (Ex. "E") at 3:30-4:50; Lopez Audio Transcript (Ex. "F") at 5:3-14.	Objection: Compound.
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16. Moving Party's Response:

1 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection  
2 which is improper under C.D L.R. 56-3 and this Court's Standing Order which  
3 provides: "The opposing party shall not set forth legal or evidentiary objections in  
4 the statement of genuine disputes of material fact. . . . If a party fails to dispute a  
5 fact properly by offering evidence that does not contradict the proffered fact, the  
6 Court will deem the fact undisputed for purposes of the motion. See Fed. R. Civ.  
7 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of  
8 this Motion.

17. In response, Holland said "I will  
1 shoot you" multiple times.

2 Lopez Depo. (Ex. "A") at 31:22-32:1,  
3 33:22-34:1; Lopez Audio (Ex. "E") at  
4 3:30-4:50; ; Lopez Audio Transcript  
5 (Ex. "F") at 5:15-16.

Objections: Calls for speculation that  
Holland said this in response to the  
command to show his hands.  
Otherwise, undisputed.

17. Moving Party's Response:

16 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection  
17 which is improper under C.D L.R. 56-3 and this Court's Standing Order which  
18 provides: "The opposing party shall not set forth legal or evidentiary objections in  
19 the statement of genuine disputes of material fact. . . . If a party fails to dispute a  
20 fact properly by offering evidence that does not contradict the proffered fact, the  
21 Court will deem the fact undisputed for purposes of the motion. See Fed. R. Civ.  
22 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of  
23 this Motion.

24 18. Deputy Lopez told Holland to show  
25 him his hands a total of 19 times  
26 within a period of one minute and  
27 nineteen seconds.

28 Lopez Depo. (Ex. "A") at 42:6-13;  
Lopez Audio (Ex. "E") at 3:30-4:50; ;  
Lopez Audio Transcript (Ex. "F") at  
5:4-6:11.

Undisputed.

1	19. Holland told Deputy Lopez that he 2 was going to shoot him a total of 10 3 times during that same period. 4 Lopez Depo. (Ex. "A") at 16:19-21, 5 34:2-5, 40:23-41:1; Lopez Audio 6 (Ex. "E") at 3:30-4:50; ; Lopez 7 Audio Transcript (Ex. "F") at 5:4- 6:11.	Disputed to the extent that some of Holland's statements were "I will shoot" as opposed to "I will shoot you." Lopez Audio Transcript (Ex. "F") at 5:4-6:11.
8	19. Moving Party's Response:  9 Plaintiffs' dispute is not to the fact presented, Plaintiffs' dispute is to the word 10 choice, thus there is not dispute of fact. In line with all evidence presented in this 11 motion, the change of wording has no bearing on the effect of the threat in the 12 evaluation of the use of force. Thus, this fact is undisputed for the purpose of this 13 Motion.	
14	20. Immediately after Holland stated, "I 15 will shoot you" the tenth time, 16 Deputy Lopez fired his weapon six 17 times in quick succession at Holland.  18 Lopez Depo. (Ex. "A") at 12:25- 19 13:1; Lopez Audio (Ex. "E") at 4:50- 4:57; Lopez Audio Transcript (Ex. 20 "F") at 6:11-13.	Objections: Vague and ambiguous as to time and trajectory. Otherwise, undisputed.
21	20. Moving Party's Response:  22 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection 23 which is improper under C.D L.R. 56-3 and this Court's Standing Order which 24 provides: "The opposing party shall not set forth legal or evidentiary objections in the statement of genuine disputes of material fact. . . . If a party fails to dispute a 25 fact properly by offering evidence that does not contradict the proffered fact, the Court will deem the fact undisputed for purposes of the motion. <u>See</u> Fed. R. Civ. 26 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of 27 this Motion.	
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1	21. After the shooting, Deputy Lopez immediately put out "shots fired" over the radio and requested medical.	Objection: Irrelevant because Plaintiffs have dismissed their claim for denial of medical care.
2	Lopez Audio (Ex. "E") at 4:50-5:55; Lopez Audio Transcript (Ex. "F") at 5:4-6:22; Hillebrand Depo. (Ex. "B") at 15:15-21; Rios Depo. (Ex. "G") at 15:18-21, 25:15-18.	Otherwise, undisputed.
3	21. Moving Party's Response:	
4	Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection 5 which is improper under C.D L.R. 56-3 and this Court's Standing Order which 6 provides: "The opposing party shall not set forth legal or evidentiary objections in 7 the statement of genuine disputes of material fact. . . . If a party fails to dispute a 8 fact properly by offering evidence that does not contradict the proffered fact, the 9 Court will deem the fact undisputed for purposes of the motion. <u>See</u> Fed. R. Civ. 10 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of 11 this Motion.	
12	22. Deputy Kristopher Hillebrand ("Deputy Hillebrand") and Sergeant Mark Rios ("Sergeant Rios") heard the broadcast of the foot pursuit, and "shots fired" and arrived within approximately one minute of the shots fired broadcast.	Disputed to the extent that the radio broadcast indicated that a suspect was running, not that Lopez was engaged in a foot pursuit. "Ex. 3" (Rios Depo.) at 14:9-11.
13	Hillebrand Depo. (Ex. "B") at 15:11- 14, 22-25; Rios Depo. (Ex. "G") at 15:15-24, 17:23-18:1.	Disputed to the extent that Hillebrand testified that he arrived approximately 60 seconds after he heard the "one running" broadcast. "Ex. 2" (Hillebrand Depo.) at 15:11-14, 31:3-6
14	22. Moving Party's Response:	
15	As an initial matter, Plaintiffs' dispute is not to the fact presented, Plaintiffs' dispute is to the word choice, thus there is not dispute of fact. Further, Plaintiffs' dispute to this fact is not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action. Accordingly, this fact is undisputed for the purpose of this Motion.	

1	23. When Deputy Hillebrand arrived he 3 asked Deputy Lopez where is the 4 gun, and Deputy Lopez replied "I 5 don't know. He said he was going to 6 shoot me." 7 8 Lopez Depo. (Ex. "A") at 15:25- 9 16:11, 15-21, 25, 17:1-2, 63:4-17; 10 Lopez Audio (Ex. "E") at 6:10-6:20; 11 Lopez Audio Transcript (Ex. "F") at 12 6:25-7:4; Hillebrand Depo. (Ex. "B") 13 at 23:8-18, 24:13-19, 25:1-8. 14 15 23. Moving Party's Response: 16 17 As an initial matter, Plaintiffs' dispute is not to the fact presented, Plaintiffs' 18 dispute is to the word choice, thus there is not dispute of fact. Further, Plaintiffs' 19 dispute to this fact is not material to Plaintiffs' claims and has no bearing on 20 Defendants' liability in this action. Accordingly, this fact is undisputed for the 21 purpose of this Motion. 22 23 24. Deputy Lopez handcuffed Holland 24 and then proceeded to pat down 25 Holland to search him for weapons 26 and check for injuries. 27 28 Lopez Depo. (Ex. "A") at 60:3-11, 29 61:1-11; Hillebrand Depo. (Ex. "B") 30 at 25:20-25, 27:23-28:5. 31 32 25. After Holland was handcuffed and 33 searched, Deputy Hillebrand called 34 over the radio to notify medical it 35 was clear for them to proceed into the 36 scene. 37 38 Hillebrand Depo. (Ex. "B") at 26:1-4. 39	40 Disputed to the extent that Hillebrand's 41 question included, "Do we have a 42 gun?" or "Did he have a gun?" Lopez 43 Audio Transcript (Ex. "F") at 6:25-7:4; 44 Lopez Audio (Ex. "E") at 6:10-6:20. 45 46
47	48 24. Deputy Lopez handcuffed Holland 49 and then proceeded to pat down 50 Holland to search him for weapons 51 and check for injuries. 52 53 Lopez Depo. (Ex. "A") at 60:3-11, 54 61:1-11; Hillebrand Depo. (Ex. "B") 55 at 25:20-25, 27:23-28:5. 56 57 25. After Holland was handcuffed and 58 searched, Deputy Hillebrand called 59 over the radio to notify medical it 60 was clear for them to proceed into the 61 scene. 62 63 Hillebrand Depo. (Ex. "B") at 26:1-4. 64	65 Undisputed.
66	67 25. After Holland was handcuffed and 68 searched, Deputy Hillebrand called 69 over the radio to notify medical it 70 was clear for them to proceed into the 71 scene. 72 73 Hillebrand Depo. (Ex. "B") at 26:1-4. 74	75 Objections: Irrelevant because 76 Plaintiffs' denial of medical care claim 77 has been dismissed. Otherwise, 78 undisputed.

1 25. Moving Party's Response:

2 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection  
3 which is improper under C.D L.R. 56-3 and this Court's Standing Order which  
4 provides: "The opposing party shall not set forth legal or evidentiary objections in  
5 the statement of genuine disputes of material fact. . . . If a party fails to dispute a  
6 fact properly by offering evidence that does not contradict the proffered fact, the  
7 Court will deem the fact undisputed for purposes of the motion. See Fed. R. Civ.  
8 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of  
this Motion.

9 26. When Sergeant Rios arrived, Deputy  
10 Lopez asked him to retrieve a  
11 medical aid trauma kit from his  
12 marked patrol vehicle and Sergeant  
13 Rios immediately began to  
14 administer medical aid to Holland  
15 and requested additional medical  
assistance.

16 Lopez Depo. (Ex. "A") at 60:10-11;  
17 Lopez Audio (Ex. "E") at 6:25-7:05;  
18 Lopez Audio Transcript (Ex. "F") at  
7:6-13; Hillebrand Depo. (Ex. "B") at  
19 29:6-13; Rios Depo. (Ex. "G") at  
20 21:13-19, 23:23-24:3, 25:3-10.

Undisputed. Irrelevant because  
Plaintiffs' denial of medical care claim  
has been dismissed.

21 26. Moving Party's Response:

22 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection  
23 which is improper under C.D L.R. 56-3 and this Court's Standing Order which  
24 provides: "The opposing party shall not set forth legal or evidentiary objections in  
25 the statement of genuine disputes of material fact. . . . If a party fails to dispute a  
26 fact properly by offering evidence that does not contradict the proffered fact, the  
27 Court will deem the fact undisputed for purposes of the motion. See Fed. R. Civ.  
28 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of  
this Motion.

<p>1 27. American Medical Response 2 paramedics arrived within 3 approximately five minutes and 4 pronounced Holland deceased. 5 6 Hillebrand Depo. (Ex. "B") at 26:14- 7 21, 28:17-29:5; Rios Depo. (Ex. "G") 8 at 25:11-14, 19-22.</p>	<p>Undisputed. Irrelevant because Plaintiffs' denial of medical care claim has been dismissed.</p>
<p>7 27. Moving Party's Response: 8 9 Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection 10 which is improper under C.D L.R. 56-3 and this Court's Standing Order which 11 provides: "The opposing party shall not set forth legal or evidentiary objections in 12 the statement of genuine disputes of material fact. . . . If a party fails to dispute a 13 fact properly by offering evidence that does not contradict the proffered fact, the 14 Court will deem the fact undisputed for purposes of the motion. <u>See</u> Fed. R. Civ. 15 P. 56(e)(2), L.R. 56-3." Accordingly, this fact is undisputed for the purpose of 16 this Motion.</p>	
<p>15 28. Deputy Lopez did not identify a gun 16 in Holland's hand prior to the 17 shooting and no gun was collected 18 from Holland after the incident. 19 20 Lopez Depo. (Ex. "A") at 14:9-20, 21 53:24-54:4; Rios Depo. (Ex. "G") at 22 20:15-24, 21:1.</p>	<p>Undisputed.</p>
<p>21 29. However, based on Holland's 22 statement "I will shoot you," and a 23 black object that was in Holland's 24 right hand at waist level, Deputy 25 Lopez reasonably believed that 26 Holland was in possession of a gun. 27 28 Lopez Depo. (Ex. "A") at 16:15-21, 29 39:9-15, 41:22-42:2, 44:10-45:2, 48:15-18, 51:6-11, 16-18, 52:12-20,</p>	<p>Objection: Compound. Disputed that Lopez believed Holland had a gun in his hand. Also disputed that Deputy Lopez's belief that Holland had a gun was reasonable. Assuming Holland had the cell phone</p>

1	55:3-11, 57:14-22.	in his hand, a reasonable officer would have been able to distinguish a cell phone from a firearm. A cell phone does not have the identifying features of a firearm such as a barrel, trigger, trigger guard, grip, or magazine. Clark Decl. at ¶ 14.
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6		
7		Lopez never specifically identified a gun in Holland's hand or on his person at any time before or during the shooting. "Ex. 1" (Lopez Depo.) at 14:9- 19, 15:6-15.
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11		Holland never told Lopez that he had a gun. "Ex. 1" (Lopez Depo.) at 16:15-17, 16:22-24, 48:12-17.
12		
13		
14		
15		Lopez never communicated over his police radio that he thought Holland had a gun. "Ex. 1" (Lopez Depo.) at 68:6-11; "Ex. 2" (Hillebrand Depo.) at 16:22-25; "Ex. 4" (Sanchez Depo.) at 34:10-13, 54:3-6.
16		
17		
18		
19		
20		Lopez never saw Holland in a shooting stance. "Ex. 1" (Lopez Depo.) at 59:3-5.
21		
22		
23		Holland never extended his right arm towards Lopez. "Ex. 1" (Lopez Depo.) at 58:10-13.
24		
25		
26		
27		
28		During the first nine times that Holland stated "I will shoot you," Lopez did not see an object in Holland's hand, and it did not appear to Lopez that Holland



1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>was turning toward Lopez to shoot him. "Ex. 1" (Lopez Depo.) at 41:5-42:2, 42:17-23.</p> <p>Lopez never told Holland to "drop it." "Ex. 1" (Lopez Depo.) at 45:3-4.</p> <p>Lopez alleges that he saw the object in Holland's hand for approximately a fraction of a second before he fired his shots. "Ex. 1" (Lopez Depo.) at 46:1-3.</p> <p>Lopez did not see where the object was during the time that he was firing his shots. "Ex. 1" (Lopez Depo.) at 45:23-25.</p> <p>When Lopez was on scene after the shooting, Lopez did not state that he saw a gun or that Holland had a gun. "Ex. 1" (Lopez Depo.) at 63:4-15; "Ex. 2" (Hillebrand Depo.) at 23:24-24:1, 25:9-11; "Ex. 3" (Rios Depo.) at 21:24-22:1, 23:17-22; "Ex. 4" (Sanchez Depo.) at 55:16-20.</p> <p>An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. Clark Decl. at ¶; California Penal Code Section 835a(e)(2)).</p> <p>Under the facts of this case, Holland's statement, "I will shoot" or "I will</p>
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>shoot you" does not alone justify Lopez's use of deadly force. "Ex. 4" (Sanchez Depo.) at 33:21-34:1.</p> <p>After the shooting, Deputy Hillebrand asked Lopez, "Do we have a gun?" or "Did he have a gun?" and Lopez responded that he did not know. Def. Ex. "B" (Lopez Audio) at 6:10-6:20; "Ex. 1" (Lopez Depo.) at 63:4-15; "Ex. 2" (Hillebrand Depo.) at 23:24-24:1, 25:9-11; "Ex. 3" (Rios Depo.) at 21:24-22:1, 23:17-22; "Ex. 4" (Sanchez Depo.) at 55:16-20; "Ex. 5" (Lopez Belt Recording Transcript) at 6:25-7:2.</p> <p>When Lopez was on scene after the shooting, Lopez did not tell responding officers to look for a gun. "Ex. 2" (Hillebrand Depo.) at 24:1-8; "Ex. 3" (Rios Depo.) at 22:2-12.</p>
<p>29. Moving Party's Response:</p> <p>As an initial matter, Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection which is improper under C.D L.R. 56-3 and this Court's Standing Order. Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections. Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. All quotes and citations in plaintiffs' response to the DUF has no bearing on the analysis of what Deputy Lopez believed at the time of the shooting, and is in direct contradiction to Deputy Lopez' cited testimony in support of the DUF. Thus, this fact is undisputed for the purpose of this Motion.</p>	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>30. Additionally, Deputy Lopez engaged in a foot pursuit because he reasonably believed that Holland was an immediate danger to him as there was no cover because they were in the middle of the dessert and to the public because Holland was running towards a residential neighborhood.</p> <p>Lopez Depo. (Ex. "A") at 38:21-39:2, 51:6-11, 16-25, 52:1-20, 67:13-25, 68:1-5.</p> <p>Objections: Compound; Irrelevant as it misstates the legal standard as "immediate danger" as opposed to "immediate threat of death or serious bodily injury."</p> <p>Disputed that Deputy Lopez's belief that Holland was an immediate danger was reasonable.</p> <p>According to Plaintiffs' expert, Roger Clark, a reasonably well trained officer in Deputy Lopez's position would not have continued to pursue Mr. Holland on foot as a solo officer if he reasonably believed that Mr. Holland was armed. A reasonable officer in Deputy Lopez's position would have ceased the foot pursuit after the first time that Holland stated, "I will shoot" or words to that effect, and would have set up a perimeter. There are no objective facts to support Deputy Lopez's alleged belief that Mr. Holland would have posed an immediate threat of death or serious bodily injury to the community if Deputy Lopez let Mr. Holland continue to run and set up a perimeter to contain and search for Mr. Holland. Clark Decl. at ¶ 13.</p> <p>During the foot pursuit, Holland was generally running away from Lopez, and it was Lopez's impression that Holland was trying to get away from him. "Ex. 1" (Lopez Depo.) at 50:20-51:5; "Ex. 4" (Sanchez Depo.) at 33:5-</p>
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1	9.
2	Holland was not running directly
3	toward any neighborhood, and he made
4	no threats to harm any civilian. Clark
5	Decl. at ¶ 13.
6	When Holland said, " I will shoot you,"
7	he was running away from Lopez. "Ex.
8	1" (Lopez Depo.) at 33:22-24.
9	When Lopez fired his shots, Holland
10	was still moving away from Lopez.
11	"Ex. 1" (Lopez Depo.) at 46:4-12.
12	Lopez never saw Holland in a shooting
13	stance. "Ex. 1" (Lopez Depo.) at 59:3-
14	5.
15	Holland never extended his right arm
16	towards Lopez. "Ex. 1" (Lopez Depo.)
17	at 58:10-13.
18	Holland was never directly facing
19	Lopez immediately before or during
20	the shots. "Ex. 1" (Lopez Depo.) at
21	58:12-24.
22	Lopez never specifically identified a
23	gun in Holland's hand or on his person
24	at any time before or during the
25	shooting. "Ex. 1" (Lopez Depo.) at
26	14:9- 19, 15:6-15.
27	Assuming Holland had the cell phone
28	in his hand, a reasonable officer would
	have been able to distinguish a cell
	phone from a firearm. A cell phone



1	does not have the identifying features
2	of a firearm such as a barrel, trigger,
3	trigger guard, grip, or magazine. Clark
4	Decl. at li 14.
5	Holland never told Lopez that he had a
6	gun. "Ex. 1" (Lopez Depo.) at 16:15-
7	17, 16:22-24, 48:12-17.
8	Lopez never communicated over his
9	police radio that he thought Holland
10	had a gun. "Ex. 1" (Lopez Depo.) at
11	68:6-11; "Ex. 2" (Hillebrand Depo.) at
12	16:22-25; "Ex. 4" (Sanchez Depo.) at
13	34:10-13, 54:3-6.
14	After the shooting, Deputy Hillebrand
15	asked Lopez, "Do we have a gun?" or
16	"Did he have a gun?" and Lopez
17	responded that he did not know. Def.
18	Ex. "E" (Lopez Audio) at 6:10-6:20;
19	"Ex. 1" (Lopez Depo.) at 63:4-15;
20	"Ex. 2" (Hillebrand Depo.) at 23:24-24:1, 25:9-11; "Ex. 3" (Rios
21	Depo.) at 21:24-22:1, 23:17-22; "Ex.
22	4" (Sanchez Depo.) at 55:16-20; "Ex.
23	5" (Lopez Belt Recording) at 6:25-7:2.

30. Moving Party's Response:

As an initial matter, Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection which is improper under C.D L.R. 56-3 and this Court's Standing Order. Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Rodger Clark's declaration [Doc. 37-2] is inadmissible. *See* Defendants' Evidentiary Objections. Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. All quotes and citations in plaintiffs' response to the DUF has no bearing on

1 the analysis of what Deputy Lopez believed at the time of the shooting, and is in  
2 direct contradiction to Deputy Lopez' cited testimony in support of the DUF.  
3 Thus, this fact is undisputed for the purpose of this Motion.

4 31. Lastly, Deputy Lopez did not draw  
5 his weapon until after Holland yelled  
6 "I will shoot you" and reasonably  
7 believed that Holland had a gun  
8 based upon the way Holland was  
holding his waistband.

9 Lopez Depo. (Ex. "A") at 28:16-21,  
10 37:20-28:2, 7-9, 39:9-15, 42:9-13,  
11 48:15-18.

12 Disputed that Lopez believed Holland  
13 had a gun, and assuming he did,  
14 disputed that Deputy Lopez's belief  
15 that Holland had a gun was reasonable.

16 Assuming Holland had the cell phone  
17 in his hand, a reasonable officer would  
18 have been able to distinguish a cell  
19 phone from a firearm. A cell phone  
20 does not have the identifying features  
21 of a firearm such as a barrel, trigger,  
22 trigger guard, grip, or magazine. Clark  
23 Decl. at ¶ 14.

24 During the first nine times that Holland  
25 stated "I will shoot you," or words to  
26 that effect, Lopez did not see an object  
27 in Holland's hand, and it did not appear  
28 to Lopez that Holland was turning  
toward Lopez to shoot him. "Ex. 1"  
(Lopez Depo.) at 41:5- 42:2, 42:17-23.

Lopez never specifically identified a  
gun in Holland's hand or on his person  
at any time before or during the  
shooting. "Ex. 1" (Lopez Depo.) at  
14:9- 19, 15:6-15.

Holland never told Lopez that he had a  
gun. "Ex. 1" (Lopez Depo.) at 16:15-  
17, 16:22-24, 48:12-17.

Lopez never communicated over his



1	police radio that he thought Holland
2	had a gun. "Ex. 1" (Lopez Depo.) at
3	68:6-11; "Ex. 2" (Hillebrand Depo.) at
4	16:22-25; "Ex. 4" (Sanchez Depo.) at
	34:10-13, 54:3-6.
5	Lopez never told Holland to "drop it."
6	"Ex. 1" (Lopez Depo.) at 45:3-4.
7	When Holland said, " I will shoot you,"
8	he was running away from Lopez. "Ex.
9	1" (Lopez Depo.) at 33:22-24.
10	When Lopez fired his shots, Holland
11	was still moving away from Lopez.
12	"Ex. 1" (Lopez Depo.) at 46:4-12.
13	Lopez never saw Holland in a shooting
14	stance. "Ex. 1" (Lopez Depo.) at 59:3-
15	5.
16	Holland never extended his right arm
17	towards Lopez. "Ex. 1" (Lopez Depo.)
18	at 58:10-13.
19	Lopez did not see where the object was
20	during the time that he was firing his
21	shots. "Ex. 1" (Lopez Depo.) at 45:23-
22	25.
23	After the shooting, Deputy Hillebrand
24	asked Lopez, "Do we have a gun?" and
25	Lopez responded that he did not know.
26	"Ex. 1" (Lopez Depo.) at 63:4-15; "Ex.
27	2" (Hillebrand Depo.) at 23:24-24:1,
28	25:9-11; "Ex. 3" (Rios Depo.) at 21:24-
	22:1, 23:17-22; "Ex. 4" (Sanchez

1 2 3 4 5 6 7 8 9 10 11 12 13	Depo.) at 55:16-20; "Ex. 5" (Lopez Belt Recording) at 6:25-7:2.
31. Moving Party's Response:	
As an initial matter, Plaintiffs' dispute is not to the fact presented, but is an evidentiary objection which is improper under C.D L.R. 56-3 and this Court's Standing Order. Further, the evidence cited by Plaintiffs does not dispute this fact, rather Plaintiffs present additional unrelated and unsupported facts to manufacture a dispute of fact. Importantly, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections. Plaintiffs' dispute is not to the fact presented, and the evidence submitted does not create a dispute of fact. All quotes and citations in plaintiffs' response to the DUF has no bearing on the analysis of what Deputy Lopez believed at the time of the shooting, and is in direct contradiction to Deputy Lopez' cited testimony in support of the DUF. Thus, this fact is undisputed for the purpose of this Motion.	

14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
PLAINTIFFS' ADDITIONAL MATERIAL FACTS	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE
Background Information 32. Lopez was not responding to a serious or violent crime.  "Ex. 1" (Lopez Depo.) at 17:5-19, 19:12-15, 20:5-11, 20:16-23; "Ex. 4" (Sanchez Depo.) at 19:6-15, 19:25-20:5.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
33. At the time of the shooting, Lopez had no information that Holland had a criminal record and no information that he had ever committed an act of violence against another person.  "Ex. 1" (Lopez Depo.) at 49:8-13; "Ex. 4" (Sanchez Depo.) at 21:13-20.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.

1	34. Lopez had no information that there 2        were any weapons in the car, and he 3        did not see any weapons in the car 4        when he was at the passenger side of 5        the car.  6        "Ex. 1" (Lopez Depo.) at 24:22-24; 7        "Ex. 4" (Sanchez Depo.) at 21:6-12, 8        24:13-16.	Undisputed. However, not material to 9        Plaintiffs' claims and has no bearing 10       on Defendants' liability in this action.
11	35. When Lopez was at the passenger 12        side of the car, neither occupant of 13        the car threatened to harm Lopez.  14        "Ex. 1" (Lopez Depo.) at 26:8-14.	Undisputed. However, not material to 15        Plaintiffs' claims and has no bearing 16        on Defendants' liability in this action.
17	36. The driver, Robert Hanson, observed 18        a black cell phone in Holland's hand 19        when Holland ran from the vehicle.  20        "Ex. 4" (Sanchez Depo.) at 43:16-20.	Disputed that Robert Hanson, 21        observed a black cell phone in 22        Holland's hand as the evidence does 23        not support this.  24        However, not material to Plaintiffs' 25        claims and has no bearing on 26        Defendants' liability in this action
27	37. Holland was unarmed during this 28        incident.  29        "Ex. 1" (Lopez Depo.) at 53:11-54:9; 30        "Ex. 2" (Hillebrand Depo.) at 30:4- 31        16; "Ex. 3" (Rios Depo.) at 20:15-20.	Undisputed. However, not material to 32        Plaintiffs' claims and has no bearing 33        on Defendants' liability in this action.
34	38. Defendants' police practices expert 35        agrees that there would have been no 36        justification to use deadly force 37        against Holland prior to Holland 38        exiting the car.  39        "Ex. 4" (Sanchez Depo.) at 25:7-13.	Undisputed. However, not material to 40        Plaintiffs' claims and has no bearing 41        on Defendants' liability in this action.

<b>The Shooting</b>	
39.Lopez pursued Holland on foot as a solo officer.  "Ex. 1" (Lopez Depo.) at 31:9-10.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
40.During the foot pursuit, Holland was generally running away from Lopez, and it was Lopez's impression that Holland was trying to get away from him.  "Ex. 1" (Lopez Depo.) at 50:20-51:5; "Ex. 4" (Sanchez Depo.) at 33:5-9.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
41.When Lopez pursued Holland with his gun in his hand, Holland looked back at Lopez.  "Ex. 1" (Lopez Depo.) at 40:8-10.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
42.When Holland said, " I will shoot you" various times, he was running away from Lopez.  "Ex. 1" (Lopez Depo.) at 33:22-24.	Undisputed.
43.When Holland was running from Lopez, his back was generally toward Lopez.  "Ex. 1" (Lopez Depo.) at 37:1-10.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
44.During the foot pursuit, the distance between Lopez and Holland was approximately ten yards.  "Ex. 1" (Lopez Depo.) at 37:8-10.	Undisputed.
45.Lopez was illuminating Holland with his flashlight as he ran after him.  "Ex. 1" (Lopez Depo.) at 38:12-14.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.

1	46. During the first nine times that Holland stated "I will shoot" or "I will shoot you," Lopez did not see an object in Holland's hand, and it did not appear to Lopez that Holland was turning toward Lopez to shoot him.  "Ex. 1" (Lopez Depo.) at 41:5-42:2, 42:17-23.	Undisputed.
8	47. After Holland said, "I will shoot" or "I will shoot you" the first time, Lopez did not seek cover and did not tactically distance himself.  "Ex. 1" (Lopez Depo.) at 51:23-25, 67:8-22.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
13	48. When Holland said, "I will shoot you" for the last time, he was still running away from Lopez, and Lopez was still generally looking at Holland's back.  "Ex. 1" (Lopez Depo.) at 43:5-21; "Ex. 4" (Sanchez Depo.) at 38:2-5.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
19	49. Lopez fired six shots at Holland.  "Ex. 1" (Lopez Depo.) at 12:22-13:1.	Undisputed. .
22	50. When Lopez fired his shots, the distance between Lopez and Holland was approximately 25 feet.  "Ex. 1" (Lopez Depo.) at 14:6-8.	Undisputed.
25	51. When Lopez fired his shots, Holland was still moving away from Lopez.  "Ex. 1" (Lopez Depo.) at 46:4-12.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.

1	52. Holland never extended his right arm 2 towards Lopez.  3 "Ex. 1" (Lopez Depo.) at 58:10-13.	4 Undisputed. However, not material to 5 Plaintiffs' claims and has no bearing 6 on Defendants' liability in this action.
7	8 53. Holland was never directly facing 9 Lopez immediately before or during the shots.  7 "Ex. 1" (Lopez Depo.) at 58:12-24.	8 Undisputed. However, not material to 9 Plaintiffs' claims and has no bearing on Defendants' liability in this action.
10	11 54. Lopez never saw Holland in a 12 shooting stance.  10 "Ex. 1" (Lopez Depo.) at 59:3-5.	11 Undisputed. However, not material to 12 Plaintiffs' claims and has no bearing 13 on Defendants' liability in this action.
14	15 55. Lopez never specifically identified a 16 gun in Holland's hand or on his 17 person at any time before or during 18 the shooting.  15 "Ex. 1" (Lopez Depo.) at 14:9-19, 16 15:6-15.	16 Undisputed.
19	20 56. Holland never told Lopez that he had 21 a gun.  19 "Ex. 1" (Lopez Depo.) at 16:15-17, 20 16:22-24, 48:12-17.	21 Undisputed. However, not material to 22 Plaintiffs' claims and has no bearing 23 on Defendants' liability in this action.
24	25 57. Lopez never communicated over his 26 police radio that he thought Holland had a gun.  24 "Ex. 1" (Lopez Depo.) at 68:6-11; 25 "Ex. 2" (Hillebrand Depo.) at 16:22- 25; "Ex. 4" (Sanchez Depo.) at 26 34:10-13, 54:3-6.	26 Undisputed. However, not material to 27 Plaintiffs' claims and has no bearing 28 on Defendants' liability in this action.
27	28 58. Lopez never told Holland to "drop it."  27 "Ex. 1" (Lopez Depo.) at 45:3-4.	28 Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.

1	59. Lopez never gave Holland a verbal warning that he was going to shoot him.  "Ex. 1" (Lopez Depo.) at 42:14-16.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
2	60. Lopez alleges he saw the object in Holland's hand for approximately a fraction of a second before he fired his shots.  "Ex. 1" (Lopez Depo.) at 46:1-3.	Undisputed.
3	61. Lopez did not see where the object was during the time that he was firing his shots.  "Ex. 1" (Lopez Depo.) at 45:23-25.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
4	62. At the time of the shooting, Lopez anticipated that backup officers were on the way.  "Ex. 1" (Lopez Depo.) at 66:20-67:3; "Ex. 2" (Hillebrand Depo.) at 13:17- 22, 14:10-13.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
5	63. One shot struck Holland in the upper left buttock and one shot struck him on the back of his left thigh.  "Ex. 4" (Sanchez Depo.) at 51:19- 52:13; Clark Decl. at ¶ 15.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
6	<b>After the Shooting</b>	
7	64. Deputy Hillebrand arrived within approximately 60 seconds after hearing Lopez's broadcast that he had "one running."  "Ex. 1" (Lopez Depo.) at 66:25-67:3; "Ex. 2" (Hillebrand Depo.) at 15:11-	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.

1	14.	
2	65.Sgt. Rios arrived on scene approximately 30 seconds after Deputy Hillebrand arrived on scene.  "Ex. 2" (Hillebrand Depo.) at 31:3-6.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
3	66.After the shooting, Deputy Hillebrand asked Lopez, "Do we have a gun?" and Lopez responded that he did not know.  "Ex. 1" (Lopez Depo.) at 15:25- 16:11, 16:22-17:2, 47:20-25; "Ex. 2" (Hillebrand Depo.) at 23:5-12, 25:1- 4; "Ex. 4" (Sanchez Depo.) at 55:5- 15.	Undisputed. However, it is therefore misleading. See DUF 23, which is supported by the testimony of Deputy Lopez and Deputy Hillebrand.
4	67.When Lopez was on scene after the shooting, Lopez did not state that he saw a gun or that Holland had a gun.  "Ex. 1" (Lopez Depo.) at 63:4-15; "Ex. 2" (Hillebrand Depo.) at 23:24- 24:1, 25:9-11; "Ex. 3" (Rios Depo.) at 21:24-22:1, 23:17-22; "Ex. 4" (Sanchez Depo.) at 55:16-20; "Ex. 5" (Lopez Belt Recording) at pages 6-9..	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
5	68.When Lopez was on scene after the shooting, Lopez did not tell responding officers to look for a gun.  "Ex. 2" (Hillebrand Depo.) at 24:1-8; "Ex. 3" (Rios Depo.) at 22:2-12; "Ex. 5" (Lopez Belt Recording) at pages 6-9.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
6	69.When Lopez was on scene after the shooting, Lopez did not tell responding officers that Holland	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.

1	had turned toward him.	
2	"Ex. 2" (Hillebrand Depo.) at 3 25:16-19; "Ex. 3" (Rios Depo.) at 4 23:9-22; "Ex. 5" (Lopez Belt 5 Recording) at pages 6-9.	
6	70. After the shooting, no gun was found 7 on the ground or around Holland's 8 body.  9 "Ex. 1" (Lopez Depo.) at 53:11-54:9; 10 "Ex. 2" (Hillebrand Depo.) at 30:4- 11 16.	12 Undisputed. However, not material to 13 Plaintiffs' claims and has no bearing 14 on Defendants' liability in this action.
15	16 71. After the shooting, Lopez agreed that 17 the cell phone did not look like a gun.  18 "Ex. 1" (Lopez Depo.) at 62:9-21; 19 "Ex. 4" (Sanchez Depo.) at 56:16-19.	20 Undisputed. However, not material to 21 Plaintiffs' claims and has no bearing 22 on Defendants' liability in this action.
23	24 72. Lopez did not give a recorded 25 interview to law enforcement after the shooting.  73. The first documented time Lopez stated that Holland turned toward him was at his deposition.  74. "Ex. 1" (Lopez Depo.) at 7:3-5, 8:6- 17, 66:4-5; "Ex. 2" (Hillebrand Depo.) at 25:16-19; "Ex. 3" (Rios Depo.) at 23:9-22; "Ex. 4" (Sanchez Depo.) at 42:18-43:12.	75 Undisputed. However, not material to 76 Plaintiffs' claims and has no bearing 77 on Defendants' liability in this action.
78	<b>Police Training and Standards on the Use of Deadly Force</b>	
79	80 74. Police officers, including Lopez, are 81 trained that deadly force should only 82 be used when there is an imminent or	83 Undisputed. However, not material to 84 Plaintiffs' claims and has no bearing 85 on Defendants' liability in this action.

1 immediate threat of death or serious 2 bodily injury. 3 4 Clark Decl. at ¶¶10a, 12; "Ex. 1" 5 (Lopez Depo.) at 64:5-12; "Ex. 3" 6 (Rios Depo.) at 27:2-6; "Ex. 4" 7 (Sanchez Depo.) at 13:23-14:6.	Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections.
6 75. A threat of death or serious injury is 7 imminent when, based upon the 8 totality of the circumstances, a 9 reasonable officer in the same 10 situation would believe that a person 11 has the present ability, opportunity, 12 and apparent intent to immediately 13 cause death or serious bodily injury 14 to the peace officer or another 15 person. An imminent harm is not 16 merely a fear of future harm, no 17 matter how great the fear and no 18 matter how great the likelihood of the 19 harm, but is one that, from 20 appearances, must be instantly confronted and addressed.  21 Clark Decl. at ¶10b; California Penal 22 Code Section 835a(e)(2)).	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.  Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections.
23 76. Police officers are trained that 24 potential threat or potential deadly 25 threat is not enough to justify the use 26 of deadly force.  27 "Ex. 4" (Sanchez Depo.) at 14:7-12.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
28 77. Police officers are trained, and Peace Officer Standards and Training ("POST") instructs, that a fear of future harm is insufficient to use deadly force.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.

1	"Ex. 4" (Sanchez Depo.) at 18:15-18.	
2	78. Police officers, including Lopez, are trained that deadly force should only be used when there are no other reasonable options.  Clark Decl. at 110h; "Ex. 1" (Lopez Depo.) at 64:13-15	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.  Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections.
3	79. Police officers, including Lopez, are trained to give a verbal warning before using deadly force, when feasible.  Clark Decl. at ¶10g; "Ex. 1" (Lopez Depo.) at 64:16-18; "Ex. 4" (Sanchez Depo.) at 14:19-21.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.  Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections.
4	80. Police officers, including Lopez, are trained that they are responsible to justify each shot when using deadly force.  Clark Decl. at ¶10i; "Ex. 1" (Lopez Depo.) at 64:19-21; "Ex. 4" (Sanchez Depo.) at 14:22-24.	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.  Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections.
5	81. A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person.  Clark Decl. at ¶10a; California Penal Code Section 835a(c)(1)(A); LD 20:	Undisputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.  Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See</i> Defendants' Evidentiary Objections.

1	Chapter 4—Deadly Force, page 4.	
2	82.Under the facts of this case, Deputy 3 Lopez could not justify using deadly 4 force against Holland simply because Holland was running away.  5 Clark Decl. at ¶¶11, 12; "Ex. 4" 6 (Sanchez Depo.) at 26:1-24, 27:5-11, 33:10-20.	Undisputed.  However, based on Holland's statement "I will shoot you," and a black object that was in Holland's right hand at waist level, Deputy Lopez reasonably believed that Holland was in possession of a gun. <i>See Lopez Depo. (Ex. "A") at 16:15-21, 39:9-15, 41:22-42:2, 44:10-45:2, 48:15-18, 51:6-11, 16-18, 52:12-20, 55:3-11, 57:14-22.</i>  Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See Defendants' Evidentiary Objections.</i>
10	11	12
13	83.Under the facts of this case, Holland's 14 statement, "I will shoot" or "I will 15 shoot you" does not alone justify 16 Lopez's use of deadly force.  17 "Ex. 4" (Sanchez Depo.) at 33:21- 34:1; Clark Decl. at ¶12.	Undisputed.  However, based on Holland's statement "I will shoot you," and a black object that was in Holland's right hand at waist level, Deputy Lopez reasonably believed that Holland was in possession of a gun. <i>See Lopez Depo. (Ex. "A") at 16:15-21, 39:9-15, 41:22-42:2, 44:10-45:2, 48:15-18, 51:6-11, 16-18, 52:12-20, 55:3-11, 57:14-22.</i>  Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See Defendants' Evidentiary Objections.</i>
18	19	20
21	22	23
24	84.Defendants' police practices expert 25 agrees that it would have been 26 inappropriate for Lopez to shoot 27 Holland under the facts of this case if 28 Holland had not turned toward Lopez with an object that looked like a gun	Disputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.  Based on Holland's statement "I will shoot you," and a black object that was in Holland's right hand at waist level,

1	in his hand.	Deputy Lopez reasonably believed that Holland was in possession of a gun. <i>See Lopez Depo. (Ex. "A") at 16:15-21, 39:9-15, 41:22-42:2, 44:10-45:2, 48:15-18, 51:6-11, 16-18, 52:12-20, 55:3-11, 57:14-22.</i>
2	"Ex. 4" (Sanchez Depo.) at 27:23-28:11, 38:18-22, 42:11-14, 46:4-12, 49:7-22.	
3	85. A reasonable officer would have been able to distinguish a cell phone from a firearm.	Disputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
4	Clark Decl. at ¶14;	Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See Defendants' Evidentiary Objections.</i>
5	86. A cell phone does not have the identifying features of a firearm such as a barrel, trigger, trigger guard, grip, or magazine.	Undisputed. However material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.
6	Clark Decl. at ¶14;	Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See Defendants' Evidentiary Objections.</i>
7	87. Deputy Lopez engaged in pre-shooting misconduct negligent tactics, including: ignoring basic police training when he pursued Mr. Holland on foot as a solo officer; leaving the driver of the vehicle alone in the vehicle when he chased after Mr. Holland; failing to make clear communications over the police radio regarding the incident and failing to specifically request backup; failing to give Mr. Holland sufficient commands or a verbal warning that deadly force would be used, including not giving Mr. Holland a command to "drop it"; failing to seek cover or create distance while	Disputed. However, not material to Plaintiffs' claims and has no bearing on Defendants' liability in this action.  Based on Holland's statement "I will shoot you," and a black object that was in Holland's right hand at waist level, Deputy Lopez reasonably believed that Holland was in possession of a gun. <i>See Lopez Depo. (Ex. "A") at 16:15-21, 39:9-15, 41:22-42:2, 44:10-45:2, 48:15-18, 51:6-11, 16-18, 52:12-20, 55:3-11, 57:14-22.</i>
8		Further, Rodger Clark's declaration [Doc. 37-2] is inadmissible. <i>See Defendants' Evidentiary Objections.</i>
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1	continuing to observe or monitor Mr. Holland.	
3	Clark Decl. at ¶¶13, 16;	

4 88. From the standpoint of police  
5 practices and basic police training,  
6 the use of deadly force by Deputy  
7 Lopez was contrary to P.O.S.T. and  
8 basic police officer training for the  
9 following reasons:  
10 1. Mr. Holland posed no immediate  
11 threat of death or serious bodily injury.  
12 2. Deputy Lopez could not shoot Mr.  
13 Holland for running.  
14 3. Mr. Holland committed no crime  
15 involving the infliction of serious bodily  
16 injury or death.  
17 4. Other reasonable alternative force  
18 measures were available.  
19 5. Deputy Lopez failed to issue a verbal  
20 warning prior to using deadly force, as  
21 trained, even though it would have been  
22 feasible to do so under this set of facts.  
23 6. Officers are trained that subjective  
24 fear is insufficient to justify a use of  
25 deadly force.  
26 7. Officers are trained that fear of a  
27 potential future threat is insufficient.  
28 8. The number of shots (6) was  
excessive.  
9. Deputy Lopez overreacted, and  
officers are trained that an overreaction  
in using deadly force is a use of  
excessive force.

Clark Decl. at ¶17.

1 DATED: September 12, 2024

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**

4 By: /s/ *Kayleigh Andersen*

5 Eugene P. Ramirez

6 Kayleigh Andersen

7 Attorneys for Defendants, COUNTY OF  
8 SAN BERNARDINO and JUSTIN LOPEZ

